

## Title 18. State Board of Equalization

### NOTICE IS HEREBY GIVEN

The State Board of Equalization proposes to amend Regulations 5020, 5021, 5022, 5023, 5030, 5070, 5071, 5075, 5075.1, 5076, 5076.1, 5079, 5082.1, 5083, 5090, 5091, and 5093 and repeal Regulation 5087 in Title 18, Division 2, of the California Code of Regulations. A public hearing relevant to this action will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 23, 2004. At the hearing, any person interested may present statements or arguments orally at that time and place. The State Board of Equalization will consider written statements or arguments if received before March 23, 2004.

### INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

The State Board of Equalization proposes to amend Regulations 5020, 5021, 5022, 5023, 5030, 5070, 5071, 5075, 5075.1, 5076, 5076.1, 5079, 5082.1, 5083, 5090, 5091, and 5093 and repeal Regulation 5087 in Title 18, Division 2, of the California Code of Regulations.

The State Board of Equalization has an ongoing process of reviewing and amending the Rules of Practice to ensure that they accurately reflect hearing procedures at the Board. For that purpose, the Board is currently proposing the following action:

#### Regulations 5020, 5030, 5071 and 5090 – Taxes Affected by This Article

These regulations are being amended to reflect statutory name changes to tax and fee programs and additions or corrections to statutory references.

#### Regulation 5021 - Petition for Redetermination

The second sentence of the regulation is being amended to eliminate the passive voice and the redundant phrase “or any person directly interested,” which is already included in the definition of the term “taxpayer” in Regulation 5070(j). The third sentence of the regulation is being deleted, eliminating the requirement that the taxpayer include the areas of agreement in the petition. This provision is not truly necessary and has not been enforced.

#### Regulation 5022 - Claims for Refund

The second sentence of this regulation is being amended to eliminate the passive voice and the redundant phrase “or any person directly interested,” which is already included in the definition of the term “taxpayer” in Regulation 5070(j).

#### Regulation 5023 - Appeals Conference

The regulation is being amended to reference the currently available option of videoconferencing for appeals conferences.

Subdivision (a) of the regulation is being amended to correct a punctuation error that appears in Barclays California Code of Regulations. The colon after the word “oath” is being changed to a semi-colon.

Subdivision (b) is being amended to clarify that requests to reschedule or postpone appeals conferences are to be directed to the Board Proceedings Division. Subdivision (b) is also being amended to provide that a second rescheduling will be at the discretion of the Chief of Board Proceedings. The last sentence of (b)(1) is being amended to improve readability.

Subdivision (d) is being amended to change “Appeals Section” to “Appeals Division,” consistent with current Board organization.

Subdivision (f) is being amended to clarify that this subdivision addresses oral hearings before the Board.

#### Regulation 5070 - Definitions

The term “and includes” is being deleted throughout this regulation because it is a redundant term.

Subdivisions (a), (d) and (f) are being revised to reflect organizational changes at the Board.

Subdivision (g) is being amended to cross-reference the definition of “party” in local tax reallocation or district tax redistribution appeals.

Subdivision (h) is being amended to change the word “reconsideration” to “rehearing” for consistency. Petition for review of local tax reallocation inquires and petition for review of district tax redistribution inquires are being added to the list of petitions.

Subdivision (j) is being amended to cross-reference the definition of taxpayer in local tax reallocation or district tax redistribution appeals.

#### Regulations 5075 - Briefs Generally

“Chief, Board Proceedings Division” has been restyled “Chief of Board Proceedings” throughout.

Subdivision (a) is being amended to provide guidance regarding the appropriate briefing schedule for certain types of appeals.

Subdivision (b) is being amended to clarify that it is the Board Proceeding Division, rather than the Chief, who will return the documents; to add “excluding Table of Contents and exhibits” from the page count, which reflects Board practice; to add a hyphen to “30 page,” and to eliminate the passive voice.

In subdivision (f), the word “submissions” is being amended to “brief” to avoid confusion with submissions of evidence.

In subdivision (i), the word “briefing” is being capitalized for consistency.

#### Regulations 5075.1 - FTB Briefing Schedule

“Chief, Board Proceedings Division” has been restyled “Chief of Board Proceedings” throughout.

Subdivision (a) is being amended to clarify that it is the Board Proceedings Division who will notify the parties of the schedule and procedure for filing briefs.

Subdivisions (b)(1) and (c)(1) are being amended to require that two copies of the briefs be mailed to the Board Proceedings Division, who will then forward a copy to the Franchise Tax Board. This will ensure that the Franchise Tax Board receives a copy of all materials filed with the Board. The taxpayer will no longer be required to mail a copy of the material to the FTB.

Subdivision (b)(1) is also being amended to explain that in order to perfect the appeal the taxpayer must submit the information requested in the letter from the Board Proceedings Division and to specify that it is the Chief of Board Proceedings who may dismiss an incomplete appeal if it is not perfected within 90 days.

Subdivision (b)(2) is being amended to provide that the notification letter will come from the Board Proceedings Division rather than the Chief of Board Proceedings. Subdivision (b)(2) is also being amended to add the word “reply” in front of “brief” and to add a reference to new subdivision (b)(3).

New subdivision (b)(3) provides that for Senior Citizen Homeowner and Renters Property Tax Assistance appeals the Franchise Tax Board shall have 60 days, rather than 90 days, to file the reply brief.

Subdivision (d)(2) is being deleted because it serves no purpose since the taxpayer is not required to file a brief other than as provided in subdivision (b)(1). The “(1)” in front of the first paragraph is being deleted because it is no longer needed.

Subdivision (e) is being amended to eliminate the passive voice. The word “staff” is being capitalized for consistency.

#### Regulation 5076 - Notice and Scheduling

“Chief, Board Proceedings Division” has been restyled “Chief of Board Proceedings” throughout.

Subdivision (c) is being amended for clarity and to specify that it is the Chief of Board Proceedings who may grant a continuance.

In subdivision (d), the word “for” is being replaced by “upon a showing of” for consistency.

Subdivision (e) is being amended to provide that the Chief of Board Proceedings may make an exception to the general rule for failure to respond to a hearing notice or to appear for hearing.

#### Regulation 5076.1 – FTB Appeals Voluntary Dismissal, Negotiations and Deferrals

Subdivision (a) is being amended to specify that it is the Chief of Board Proceedings who has the authority to dismiss an appeal of an action of the Franchise Tax Board for the reasons stated. It is also being amended to eliminate the passive voice and to clarify that at any time prior to a final decision by the Board the taxpayer and the FTB may enter into settlement negotiations.

Subdivision (b) is being amended to specify that it is the Board Proceedings Division who may defer a hearing. Additionally, the word “for” is being replaced by “upon a showing of” for consistency.

#### Regulation 5079 – Hearing Procedure

“Chief, Board Proceedings Division” has been restyled “Chief of Board Proceedings” throughout.

Subdivision (a) is being amended to provide for the fact that more specific requirements exist in other regulations within the Rules of Practice.

Subdivision (c) is being amended to provide that the names and addresses of witnesses may be provided to the Board Proceedings Division rather than the Chief of Board Proceedings.

#### Regulation 5082.1 - Petition for Rehearing – FTB

New subdivisions (d) provides that if a petition for rehearing is timely filed, but incomplete, the filing party shall be granted 30 days from the date of the acknowledgement letter to perfect the petition for rehearing. This revision is consistent with existing Board practice.

New subdivision (e) provides that the opposing party shall be given 30 days from the date of the acknowledging letter of a perfected appeal in which to file a reply brief. This revision is consistent with existing Board practice.

#### Regulation 5083 – Fees and Removal of Board Records and Files

The first sentence of the regulation is being amended to eliminate the passive voice. The third sentence, which provides that records and files shall not be removed from the offices of the Board, is being deleted because it does not reflect current practice because there are Board employees who telework and therefore must remove records and files from the offices of the Board. The statutory reference in the last sentence is being updated.

#### Regulation 5087 - Withdrawal of Exhibits

This regulation is being repealed because it is unnecessary under current Board practice, which does not require the submission of original documents into evidence.

#### Regulation 5091 - Eligible Claims

Currently, the Board receives Taxpayers’ Bill of Rights claims from taxpayers who have not prevailed in their cases before the Board. Although such claims are denied, processing these

claims requires staff time in the Legal Department and Board Proceedings Division. In order to provide further guidance to taxpayers regarding eligible claims, this regulation is being amended to specifically state that a taxpayer does not have an eligible claim if the Board did not grant the taxpayer's petition or claim. Additionally, "Appeals Section" is being amended to "Appeals Division," consistent with current Board organization.

The provision regarding the Franchise Tax Board's Review and Write procedure is being deleted because it no longer exists.

#### Regulation 5093 - Claim Procedure

"Chief, Board Proceedings Division" has been restyled "Chief of Board Proceedings" throughout.

Subdivision (b) is being amended to specify that failure to file a complete claim within the time granted will result in dismissal of the claim by the Chief of Board Proceedings.

A new subdivision (c), addressing the dismissal of ineligible claims, is being added to authorize the Chief of Board Proceedings to dismiss a claim when the Board previously disposed of the case without granting the petition or claim.

Relettered subdivision (d) is being amended to specify that the 60-day period for submittal of a staff statement begins with the filing of a complete claim form. The word "Staff" after "Franchise Tax Board" is being amended to lower case.

#### **COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings on Federal funding to the State of California.

#### **EFFECT ON BUSINESS**

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization makes an initial determination that the amendments to Regulations 5020, 5021, 5022, 5023, 5030, 5070, 5071, 5075, 5075.1, 5076, 5076.1, 5079, 5082.1, 5083, 5090, 5091, and 5093 and repeal of Regulation 5087 will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with other states.

The proposed action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The proposed action may affect small business.

## COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

## SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

## FEDERAL REGULATIONS

Regulations 5020, 5021, 5022, 5023, 5030, 5070, 5071, 5075, 5075.1, 5076, 5076.1, 5079, 5082.1, 5083, 5087, 5090, 5091, and 5093 have no comparable federal regulations.

## AUTHORITY

Government Code section 15606(a); Health and Safety Code sections 105190 and 105310; Public Resources Code section 42882; Public Utilities Code section 893; Revenue and Taxation Code sections 7051, 7202, 7203, 7261, 7262, 7270, 8251, 9251, 11651, 13170, 30451, 32451, 38701, 41071, 41128, 43501, 44003, 45851, 46601, 50152, 55301, and 60601.

## REFERENCE

Government Code section 6253 and 15613; Civil Code section 1798.33; and Revenue and Taxation Code sections 254.5, 270, 742, 1840, 4877, 6538, 6538.5, 6561, 6561.5, 6562, 6814, 6902, 6904, 7091, 7209, 7270, 7700, 7700.5, 7710, 7710.5, 7711, 8128, 8129, 8269, 8828, 8828.5, 8851, 8851.5, 8852, 9152, 9153, 9269, 11340, 11353, 11657, 12428, 12429, 12978, 12979, 19045, 19046, 19047, 19048, 19072, 19084, 19085, 19087, 19331, 19332, 19333, 19334, 19335, 19345, 19346, 20645, 21013, 30243, 30243.5, 30261, 30261.5, 30262, 30362, 30363, 30458.9, 32301, 32301.5, 32302, 32312, 32313, 32402, 32469, 38433, 38435, 38441, 38442, 38443, 38602, 38603, 38708, 40091, 40092, 40093, 40112, 40113, 40209, 41085, 41086, 41087, 41101, 41102, 41169, 43301, 43302, 43303, 43351, 43352, 43452, 43520, 45301, 45302, 45303, 45352, 45353, 45652, 45865, 46302, 46303, 46351, 46352, 46353, 46502, 46503, 46620, 50114, 50115, 50116, 50120.2, 50120.3, 50140, 50156.9, 55081, 55082, 55083, 55102, 55103, 55222, 55330, 60332, 60333, 60350, 60351, 60352, 60522, 60523, and 60630.

## CONTACT

Questions regarding the content of the proposed action should be directed to Ms. Ani Kindall, Senior Tax Counsel, telephone (916) 324-2195, fax (916) 323-3387, email [Ani.Kindall@boe.ca.gov](mailto:Ani.Kindall@boe.ca.gov), or by mail at State Board of Equalization, Attn: Ani Kindall, MIC:82, P. O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984,

email [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov) or, email [Karen.Anderson@boe.ca.gov](mailto:Karen.Anderson@boe.ca.gov) or by mail at State Board of Equalization, Attn: Diane Olson or Karen Anderson, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

## ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which these amendments are proposed or be as effective and less burdensome to affected private persons than the proposed amendments.

## AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed action. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed action are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

## AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed action. It will also be available for your inspection at 450 N Street, Sacramento, California.

## ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the proposed amendments to the regulations if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulations. The text of any modified regulation will be mailed to those interested parties who commented orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The Board will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.